

1 ANDRÉ BIROTTE JR.
United States Attorney
2 SHERI PYM
Assistant United States Attorney
3 Chief, Riverside Branch Office
CHARLES E. PELL (Cal. State Bar No. 210309)
4 Assistant United States Attorney
Riverside Branch Office
5 3880 Lemon Street, Suite 210
Riverside, California 92501
6 Telephone: (951) 276-6104
Facsimile: (951) 276-6202
7 Email: Charles.E.Pell2@usdoj.gov

8 Attorneys for Plaintiff
UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 EASTERN DIVISION

13 UNITED STATES OF AMERICA,) No. ED CR 10-00006-VAP
14)
Plaintiff,) GOVERNMENT'S SENTENCING
15) POSITION AND OBJECTION TO PRE-
v.) SENTENCE REPORT FOR NATHAN
16) RAMON WELLS
NATHAN RAMON WELLS,)
17) Date: October 18, 2010
Defendant.) Time: 9:00 a.m.
18)
19)
20)

21 Pursuant to Rule 32(f) of the Federal Rules of Criminal
22 Procedure, plaintiff United States of America, by and through its
23 counsel of record, Assistant United States Attorney Charles E.
24 Pell, having received and reviewed the Pre-Sentence Report
25 ("PSR") for defendant Nathan Ramon Wells (DE 34), hereby submits
26 the government's objection to the PSR and the government's
27 sentencing position. The government's position is based upon the
28 attached Memorandum of Points and Authorities, the files and

1 records in this case, as well as any evidence or argument the
2 Court may allow at the sentencing hearing.

3 Dated: September 28, 2010

4 Respectfully submitted,

5 ANDRÉ BIROTTE JR.
6 United States Attorney

7 SHERI PYM
8 Assistant United States Attorney
9 Chief, Riverside Branch Office

10 //s//
11 CHARLES E. PELL
12 Assistant United States Attorney
13 Riverside Branch Office

14 Attorneys for Plaintiff
15 United States of America
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On August 2, 2010, defendant Nathan Ramon Wells ("Wells") pleaded guilty to count one of the indictment in which he is named. (Pre-Sentence Report ("PSR") ¶ 1). Count one charges defendant with interference with an operator of an aircraft, in violation of 18 U.S.C. § 32(a)(5). (Id. ¶ 2; DE 1 (Indictment)). Defendant pleaded guilty pursuant to a written plea agreement. (PSR ¶ 3; DE 31 (Plea Agreement)).

The Probation Office has determined that defendant's total offense level is 15 and that his criminal history category is III. (PSR at 3 & ¶¶ 26, 40). Based on the advisory guidelines range of 24 to 30 months, the Probation Office recommends 24 months' imprisonment. (DE 33 at 1).

II. SUMMARY OF FACTS OF THE CASE

On June 3, 2009, California Highway Patrol ("CHP") officers were assisting Cathedral City Police Department ("CCPD") with a possible residential burglary call. While those two CHP officers orbited the CHP helicopter approximately 700 feet above ground level, defendant used a green laser multiple times to illuminate the cockpit of the police helicopter with a bright green light, which caused both CHP officers to look away, and therefore interfered with their operation of the aircraft.

The CHP officers then used their NightSun light to light up the vehicle from which the laser-beam had emanated and followed it throughout Cathedral City. The vehicle, which defendant was driving, ultimately stopped at a residence, and defendant exited the vehicle. CCPD officer D. Hodge arrived at the location and

1 ordered the defendant to the ground. As defendant went to the
2 ground, officer Hodge observed a black pen-like item in
3 defendant's hand. Officer Hodge ordered defendant to drop the
4 pen-like item, which defendant did. Officer Hodge confirmed that
5 the pen-like item was a laser.

6 On January 26, 2010, FBI special agent A. Davis interviewed
7 defendant, and defendant confessed to pointing the laser at the
8 police helicopter. Specifically, defendant admitted that he was
9 driving his car around the "Dream Homes" neighborhood in
10 Cathedral City and noticed a helicopter hovering over that
11 neighborhood. Defendant admitted that he pointed a green laser
12 at the helicopter, which he knew was a police helicopter. When
13 defendant pointed the laser at the police helicopter, defendant
14 acted with a reckless disregard for the safety of human life.

15 **III. GOVERNMENT'S POSITION**

16 A. Pre-Sentence Report (PSR)

17 The government raises not any objection to the PSR.
18 Further, the government adopts its factual findings. The
19 government agrees with the PSR's determination of criminal
20 history category.

21 B. The Guidelines Calculation

22 The government agrees with the Probation Office that
23 U.S.S.G. § 2A5.2 applies to the instant offense. Because
24 defendant's actions recklessly endangered the safety of the CHP
25 helicopter, the government respectfully submits that applicable
26 guidelines calculation should be:

27 Base Offense Level: 18 U.S.S.G. § 2A5.2(a)(2)
28

1 Acceptance of
2 Responsibility: -3 U.S.S.G. §3E1.1

3 **Final Offense Level: 15**

4 An offense level of 15 with criminal history category III
5 yields a range of 24 to 30 months of imprisonment.

6 C. The Government's Recommendation

7 The government respectfully recommends that defendant be
8 sentenced to 18 months of imprisonment, which equates to the low
9 end of the range that is two levels below the otherwise-
10 applicable Guideline range.

11 The government submits that this proposed sentence comports
12 with the Sentencing Guidelines (which are advisory in light of
13 the Supreme Court's ruling in United States v. Booker, 543 U.S.
14 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005)), and also takes
15 into account the factors enumerated in 18 U.S.C. § 3553(a),
16 including the nature and circumstances of the offense and the
17 history and characteristics of the defendant, the need for the
18 sentence imposed to reflect the seriousness of the offense, to
19 promote respect for the law, and to provide just punishment for
20 the offense, and for the sentence imposed to afford adequate
21 deterrence to criminal conduct.

22 Section 3553(a)(4) instructs the Court to examine the
23 applicable Guidelines range, which was discussed supra. Section
24 3553(a)(2)(B) provides that in determining the particular
25 sentence to be imposed, the Court should consider the need for
26 the sentence imposed "to afford adequate deterrence to criminal
27 conduct." General deterrence is important in this case, because
28 the frequency of these type of laser incidents is increasing,

1 with not only helicopters, but also commercial airlines being
2 lasered. The individuals who use lasers in this illegal manner
3 need to know that this type of crime is serious and will result
4 in federal prison time.

5 Section 3553(a)(2)(C) focuses on the need for the sentence
6 to protect the public from further crimes of the defendant.
7 Defendant is young, but his criminal behavior is increasing, both
8 with frequency and seriousness. Defendant committed this crime
9 on June 3, 2009. (Id. ¶ 10). Since then, he has been arrested
10 at least five times: (1) on June 11, 2009, for possession of
11 marijuana (id. ¶ 42); (2) on September 25, 2009, for evading
12 arrest (id. ¶ 43); (3) on November 22, 2009, for false
13 identification to a police officer (id. ¶ 44); (4) on November
14 30, 2009, for battery on a police officer¹ (id. ¶ 45); and (5) on
15 March 1, 2010, for possession of marijuana (id. ¶46).²

16 Moreover, defendant seems to have failed to learn his lesson
17 from this case: while on pre-trial supervision, he violated the
18 conditions of release by being arrested by CCPD for possessing
19 marijuana. (Id.).³ Then, while on pre-sentencing release,
20 defendant again violated his conditions of release by testing
21 positive for marijuana. (DE 35). Thus, the government believes
22 that a sizable sentence is necessary to deter defendant's

23
24 ¹According to the PSR, after police initiated a traffic stop
25 on defendant, he punched a female officer in the nose, causing
blood. (Id. ¶ 45a).

26 ²Defendant also possessed a knife when he was stopped.

27 ³Because defendant pleaded guilty, in open court, the
28 government abandoned its pending appeal of the Magistrate Court's
decision not to revoke defendant's pre-trial release based upon
his violations.

1 continued criminal conduct.

2 Pursuant to the plea agreement, the government and defendant
3 agreed that a reasonable sentence under Section 3553(a) is one
4 equivalent to the range for an offense level of 13 and
5 defendant's criminal history. (DE 31 § 14). Thus, the
6 government respectfully submits that 18 months of imprisonment -
7 the low end of the range two levels below the applicable
8 Guidelines range - adequately accounts for defendant's crime of
9 lasering a law enforcement helicopter and appropriately reflects
10 the goals and purposes of sentencing as set forth in 18 U.S.C.
11 § 3553(a).

12 IV. CONCLUSION

13 Defendant used a laser to light up the cockpit of a CHP
14 helicopter. Although young, defendant already has a criminal
15 history category of III and continues to commit crimes,
16 increasing in severity. Taking into consideration all of the
17 factors, defendant should be sentenced to 18 months of federal
18 prison.

19 Dated: September 28, 2010

20 Respectfully submitted,

21 ANDRÉ BIROTTE JR.
22 United States Attorney

23 SHERI PYM
24 Assistant United States Attorney
25 Chief, Riverside Branch Office

26 /s/
27 CHARLES E. PELL
28 Assistant United States Attorney
Riverside Branch Office

Attorneys for Plaintiff
United States of America